

## THE LOCAL HISTORIC DISTRICT ORDINANCE

Michigan's *Local Historic Districts Act*, Public Act 169 of 1970, as amended (PA 169) is the state legislation that enables a community to adopt a local historic district ordinance. Any local unit of government (village, city, township, or county) can adopt a historic district ordinance.

PA 169 declares historic preservation to be a public purpose with the goals of safeguarding a community's heritage, stabilizing and improving property values, fostering civic beauty, strengthening the local economy and promoting the use of historic buildings for the education, welfare and pleasure of the citizens of Michigan. Adopting a local historic district ordinance and declaring preservation a public purpose gives the local unit of government the power to regulate work in designated local historic districts to ensure that the physical integrity of historic resources is retained.

The local historic district ordinance sets forth the administrative procedures that must be followed when establishing a local historic district. It also establishes the membership requirements and the duties and powers of the historic district commissions, the design review standards by which work in historic districts is reviewed, and a process for appealing historic district commission decisions. The procedures set forth in PA 169 ensure that all property owners in designated local historic districts in Michigan receive the same treatment under the law, protecting their constitutional right of due process.

The local historic district ordinance is a land use regulatory tool similar to a zoning ordinance. It enables the community to say that resources in a specific, designated area are of such importance to the community overall that work in the district must meet established standards and guidelines.

### Who Writes the Historic District Ordinance

Typically, the historic district study committee in conjunction with the municipal attorney will write the historic district ordinance. A model ordinance is included in Appendix C. When creating an ordinance, communities are encouraged to utilize as closely as possible the language set forth in PA 169 to ensure that definitions and procedures are consistent with the law. Don't paraphrase, simplify, or rewrite the language. Experience has shown that this results in discrepancies that can have serious consequences. **Example:** One community only included the term building in its definition of resource. When the city's power company erected large electrical towers in the historic district without getting approval from the historic district commission, the commission took them to circuit court. The power company won the case. The judge ruled that the city had limited the review powers of the commission by only including the term building and not the other terms (object, site, structure, district, feature and open space) found in the definition of a resource in PA 169 in the local ordinance.

PA 169 contains a number of duties and procedures and procedures that are required for inclusion in the ordinance. These are typically identified by the use of the word shall. **Example:** "The commission shall follow the U.S. secretary of the interior's standards. . . .".

In addition, PA 169 includes a number of powers that may be included in the historic district ordinance such as the power to:

- delegate the review of minor classes of work,
- review work in a proposed district,
- declare a moratorium on work in a district, or
- establish fines for violation of the ordinance.

These powers provide the real teeth of the ordinance. Experience has shown that it is best to create a strong ordinance that includes all of the powers set forth in PA 169. Never write an

ordinance to accommodate the conditions that exist in the community today. Instead, write the ordinance with thoughts of the future when the community may face development pressures that could never be imagined today. If the powers available to the local unit of government are limited or curtailed in the ordinance, so is the community's ability to protect its history. Including these powers in the ordinance will enable the community to invoke them should the need arise. It is the decision of the local unit of government to exercise the powers or not, but if the powers are completely omitted from the historic district ordinance they will not have that option should the need arise.

### **Adopting the Historic District Ordinance**

A local unit of government must adopt a local historic district ordinance when it votes to establish a local historic district. However, it does not have to establish a local historic district in order to adopt a historic district ordinance. **A historic district ordinance can be adopted at any time. Adopting an ordinance does not require a community to create a local historic district.** Having an ordinance in place and undertaking a historic resource survey will provide the community with the legal foundation to invoke the protective powers given them in PA 169, such as a moratorium on work in a proposed district, should a threat to a historic resource or district ever arise. *(Note: The historic resource survey is merely the collection of data about a historic area. It differs from the historic district study process that starts the administrative clock for establishing a local historic district.)* This would give the community time to work on an alternate plan to save the resource.

### **An Ordinance Pursuant to PA 169**

Occasionally revisions are made to the state enabling law, Public Act 169 of 1970. To date, this has occurred in 1980, 1986 and 1992. The 1992 revisions were significant and added many clarifications and new powers. Communities are encouraged to update their ordinances as soon as possible after Public Act 169 of 1970 is amended to ensure they are following correct procedures and have the maximum powers allowed them under the law at their disposal. A checklist is provided in Appendix C that will help in developing or updating an ordinance.

In order for a community to qualify for the state historic preservation tax incentives or for Certified Local Government status, the historic district ordinance must be in compliance with Michigan's *Local Historic Districts Act*. At the very minimum the ordinance must contain the appropriate definitions for historic district, historic resource, resource, and work. It must contain the appropriate procedure for establishing a local historic district and the appropriate appeals process. Most importantly, the commission must have the power of binding design review using the *Secretary of the Interior's Standards*. The ordinance cannot contain clauses that restrict the historic district commission's review of resources in a designated local historic district.

#### **Examples:**

- Owner consent clauses of any type
- Voluntary participation in the review process
- Limiting review to a specified portion of a resource such as the front façade or to portions visible from the right away
- Limiting review to work that requires a building permit
- Limiting review to specific types of resources such as buildings only
- Different levels of review in a historic district
- Provisions where hospitals, churches, or publicly owned buildings are exempt from commission review
- Provisions where the building inspector or city council have final approval for demolitions in local historic districts
- Sunset clause that specifies a date when a district will be terminated